

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

DEC 12 2012

JULIA C. BUDDEY, CLERK
BY:  DEPUTY CLERK

DONALD KENT HOFFMAN,

Plaintiff,

v.

DAIMLER TRUCKS NORTH
AMERICA, LLC, et al.,

Defendants.

Civil Action No.: 7:12-cv-394

ORDER

Hon. James C. Turk
Senior United States District Judge

Federal Rule of Civil Procedure 4(m) requires that, if a defendant has not been served within 120 days of the complaint being filed, the Court either “dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.”

For cases originally filed in state court, the 120-day period for service to be effectuated commences upon removal to federal court. Randolph v. Hendry, 50 F. Supp. 2d 572, 579 (S.D. W. Va. 1999); Lawrence v. Hanson, 197 F. Supp. 2d 533, 539 (W.D. Va. 2002) (adopting the reasoning of Randolph). Filing an amended complaint, as Plaintiff has indicated he intends to do, provides a new 120-day period for service only as to newly-added defendants, but not to defendants named in the original complaint. See Bolden v. City of Topeka, Kan., 441 F.3d 1129, 1148 (10th Cir. 2006) (citing Carmona v. Ross, 376 F.3d 829, 830 (8th Cir. 2004); 4B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1137, at 377 (3d ed. 2002); 1 James Wm. Moore et al., Moore’s Federal Practice § 4.80 (3d ed. 1997)).

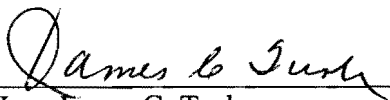
In the instant case, Plaintiff filed his complaint against four Defendants in state court on April 26, 2012. Two of the Defendants—Thor Motor Coach, Inc. and Camping World RV Sales, LLC—were apparently served and removed the case to federal court in the Eastern District of Virginia on May 22, 2012. The case was transferred to this Court from the Eastern District of Virginia on August 21, 2012.

The other two Defendants—Daimler Trucks North America, LLC, and Drew Industries, Inc.—have yet to be served. Pursuant to Rule 4(m), Plaintiff should have filed proof of service as to these two Defendants 120 days after removal to federal court, or by September 19, 2012. Therefore, Plaintiff is hereby

ORDERED

to show cause why this action should not be dismissed against these Defendants as required by Rule 4(m). Any briefs or memoranda in this regard should be filed with the Court within 14 days of the entry of this Order.

ENTER: This 12th day of December, 2012.



Hon. James C. Turk
Senior United States District Judge